

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In re the Joint Petition of the RADIO COMMISSION OF THE SOUTHERN BAPTIST CONVENTION AND THE EXECUTIVE BOARD OF THE BAPTIST GENERAL CONVENTION OF TEXAS	}	DOCKET No. 9470
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July 25, 1951

MEMORANDUM OPINION AND ORDER

BY THE COMMISSIONER (COMMISSIONER HENNOCK NOT PARTICIPATING;
COMMISSIONERS WALKER AND JONES DISSENTING) :

The instant proceeding was initiated by a petition filed January 23, 1949, by the Radio Commission of the Southern Baptist Convention and the Executive Board of the Baptist General Convention of Texas which requested that the Commission amend its rules to extend to religious organizations the privileges and exemptions now accorded to non-commercial educational FM broadcast stations. That petition was designated for oral argument to determine whether the Commission may, consistently with the provisions of the First Amendment of the Constitution of the United States, establish a specific category of religious broadcast stations. Thereafter, on December 30, 1949, the petitioners filed with the Commission a supplemental petition which expanded the classification of the potential beneficiaries of the proposed amendment to include all "tax exempt non-profit organizations." Accordingly, the question for determination at this time is whether the public interest would be served by the establishment of a new class of FM service for "tax exempt non-profit organizations."

On June 27, 1950, the Commission directed that oral argument be had on the following issues raised by the supplemental petition:

1. To determine whether a substantial demand has been shown among tax-exempt nonprofit organizations, including but not limited to petitioners, for the sub-allocation preference sought in the supplemental petition.
2. To determine whether the necessary qualifications have been shown to justify the grant of the sub-allocation preference sought in the said supplemental petition.
3. To determine whether, in the light of the showing made in the supplemental petition, the public interest, convenience and necessity would be served by the issuance of proposed Rules as requested in the supplemental petition.

In addition to the joint petitioners herein, there participated in that oral argument, which was had before the Commission *en banc* on October 31, 1950, representatives of the University Baptist Church of Baltimore, Maryland, et al, the First Congregational Church of Hackensack, New Jersey and the Protestant Radio Com-

mission. All these organizations filed memoranda in support of the joint petition. The Civil Liberties Union also filed a memorandum supporting the petition, with certain qualifications.

The record before us makes clear that the joint petitioners are desirous of obtaining authorization for the operation of FM facilities on a less costly basis than is presently provided for in our FM Rules and Regulations. We recognize that a liberalization of the present rules for the operation of FM broadcast stations so as to permit, in appropriate instances, operation with reduced power and hours of operation might have the salutary effect of encouraging the development of FM radio. It is our view, however, that the pleadings before us do not constitute a reasonable basis for the revision of our rules and the establishment of a new class of low-powered FM broadcast stations to be operated by "tax exempt non-profit organizations."

The threshold requirement for the establishment of such a service by the numerous and diverse groups comprehended by the term "tax exempt non-profit organizations" is a showing of substantial demand by these organizations for the special privileges sought; and it is our view that such a showing has not been made in this proceeding. It developed in the course of this proceeding that, with one exception¹ no organization of a type other than the original joint petitioners evinced interest to the Commission in the proposal. In spite of the protracted period which elapsed after the Commission specifically placed in issue the question whether substantial demand exists among this immensely heterogeneous group of "tax exempt non-profit organizations," none of the organizations appearing in support of the petition, including the joint petitioners themselves, adduced any affirmative data to support the conclusion that a substantial demand has been shown by the broad class of these organizations here in issue. Indeed, the joint petitioners and intervenors herein, in response to the Commission's reiterated queries at the oral argument, disclaimed all knowledge as to whether any tax exempt non-profit groups of a type other than their own, desires the privileges requested. In view of the lack of interest, thus far displayed for the proposal under consideration by groups in the broad classification of "tax exempt non-profit organizations", we must conclude that the pleadings and arguments now before us are not persuasive of a substantial demand for the establishment of a new class of low powered FM broadcast stations to be operated by "tax exempt non-profit organizations."

Accordingly, the joint petition *Is denied.*

COMMISSIONERS WALKER AND JONES DISSENTING STATEMENT

We concur in the decision of the Commission that there has been no substantial demand by tax exempt non-profit organizations other than petitioner in this proceeding to warrant the establishment of a new class of low powered FM broadcast stations to be operated by them. However, we believe that the petition should be granted in

¹ Reference is here made to the Civil Liberties Union which filed a memorandum but did not appear at the oral argument.

part and to this extent: Churches (Catholic, Protestant and Jewish), in my opinion, present a substantial demand for the establishment of such a new class of low powered FM broadcast stations.

Long before radio and television broadcasting was invented, developed and commercialized, churches exercised a real influence in the cultural affairs of communities throughout the United States. The clergy (Catholic, Protestant and Jewish) had a real voice as community leaders in the selection of material which the community enjoyed, in education, entertainment and culture, in addition to answering the real personal, spiritual needs of the individuals of the community. The primary influence that the clergy have always exercised in community affairs answers a personal and public need of our people. Radio and television broadcasting has been superimposed upon the community life. There is no reason why this continuing personal and public need should not be utilized primarily by the clergy in radio as suggested by petitioners.